

Docket No: 1193-3 (04983.0216.NPUS01/38-21)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIn re application of Brian Hauge *et al.*

Art Unit: 1638

Serial No: 09/754,853

Examiner: Kruse, David H

Filed : 01/05/2001

For: Nucleic Acid Molecules Associated With
Soybean Cyst Nematode Resistance

October 7, 2002

RECEIVED**RESPONSE TO RESTRICTION REQUIREMENT
AND PRELIMINARY AMENDMENT****FAX RECEIVED**

OCT 08 2002

GROUP 1600Box Non-Fee Amendment
Assistant Commissioner for Patents
Washington, DC 20231

Sir:

Responsive to the Office Action mailed 09/05/02 which sets forth a restriction requirement and period of one month to reply (expiring on Saturday, October 5, 2002), applicants hereby timely replies by submitting this response and preliminary amendment on the next succeeding business day, Monday October 7, 2002.

In response to the restriction requirement applicants traverse the undue division of their invention into an inordinately high number of allegedly independent and distinct inventions. The mere fact that the PTO proposes to divide 72 claims (including 5 independent claims) into 10 groups of allegedly independent and distinct inventions based on but two resistance genes is evidence of arbitrary and capricious restriction practice serving no legitimate purpose other than the generation of multiple fees from applicants forced to file multiple applications for otherwise unitized subject matter.

However, to comply with the restriction requirement and advance the prosecution of this application, applicants hereby provisionally elect the subject matter of Group I,

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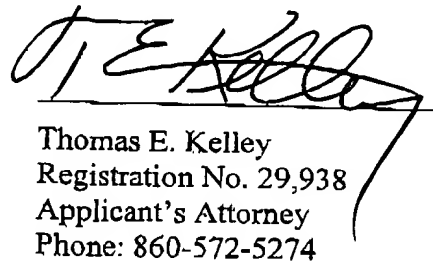
request cancellation without prejudice of original claims 1-72 and request entry of the preliminary amendment which adds new claims 73-77.

In response to the further restriction requirement to elect a single sequence applicants traverse the proposition that a single sequence is a reasonable number for examination purposes. Applicants understand that this arbitrary requirement is made solely because of the current inability of the USPTO to carry out its search function. This single sequence requirement places an economic barrier between inventors and the exclusive rights guaranteed by the United States Constitution. An applicant with an invention characterized by nucleic acid or amino acid sequence is practically barred from obtaining exclusive rights to the full scope of his invention unless he has unlimited financial resources to pay an inordinate number of application fees. Regardless of the unconstitutional bias against reasonable access to patenting of biotechnology inventions, without relinquishing rights to claims of broader scope applicants hereby provisionally elect for examination the nucleic acid sequence of SEQ ID NO:2.

Support for the Preliminary Amendment

Support for new claim 73 is found in original claim 1 which disclosed the method for producing a soybean plant with an rhg1 SCN resistant allele and original claim 29 which disclosed the method for producing a soybean plant with an Rhg4 SCN resistant allele. New claim 74 is supported by the specification at page 69, line 6, through page 70, line 13, which discloses soybean varieties having rhg1 and Rhg4 SCN resistant alleles. New claim 75 is supported by original claim 1; new claim 76 is supported by original claim 29; an new claim 77 is supported by original claims 1 and 29.

Respectfully submitted,



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